

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
AUGUSTA DIVISION

CLAIRE LOGGINS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CV 118-174
	)	
A.T.A.T.,	)	
	)	
Defendant.	)	

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**MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

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Plaintiff commenced the above-captioned case *pro se* and is proceeding *in forma pauperis* ("IFP"). Because she is proceeding IFP, Plaintiff's complaint must be screened to protect potential Defendants. Phillips v. Mashburn, 746 F.2d 782, 785 (11th Cir. 1984). Pleadings drafted by *pro se* litigants must be liberally construed, Haines v. Kerner, 404 U.S. 519, 520-21 (1972), but the Court may dismiss a complaint, or any part thereof, that is frivolous or malicious or that fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B)(i) & (ii).

**I. SCREENING OF THE COMPLAINT**

**A. BACKGROUND**

Plaintiff names as Defendant A.T.A.T. (See doc. no. 1.) Taking all of Plaintiff's factual allegations as true, as the Court must for purposes of the present screening, the facts are as follows.

In June 2011, unidentified employees of A.T.A.T. removed a phone box from

Plaintiff's home in Augusta, Georgia, and put a "government box" on her home. (Id. at 4.) A person named "Jeff" calls her and threatens to rape and kill her, blow up her home, hurt her family, and steal all their phones. (Id. at 6.) The Sheriff and U.S. Marshal know about the situation but will not do anything. (Id. at 7.) A.T.A.T. is attempting to steal the box even though it is not theirs. (Id.) Plaintiff will do what she needs to protect herself. (Id. at 8.) Nobody is allowed on her property. (Id.) Plaintiff is not a criminal and she is not going anywhere. (Id. at 9.) This is a free country and she does not need to be afraid of perverts. (Id.) Plaintiff seeks as relief \$50,000. (Id. at 4.)

## **B. DISCUSSION**

### **1. Legal Standard for Screening**

The complaint or any portion thereof may be dismissed if it is frivolous, malicious, or fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune to such relief. See 28 U.S.C. § 1915(e)(2)(B). A claim is frivolous if it "lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 327 (1989). "Failure to state a claim under § 1915(e)(2)(B)(ii) is governed by the same standard as dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6)." Wilkerson v. H & S, Inc., 366 F. App'x 49, 51 (11th Cir. 2010) (*per curiam*) (citing Mitchell v. Farcass, 112 F.3d 1483, 1490 (11th Cir. 1997)).

To avoid dismissal for failure to state a claim upon which relief can be granted, the allegations in the complaint must "state a claim for relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the

defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). That is, “[f]actual allegations must be enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555. While Rule 8(a) of the Federal Rules of Civil Procedure does not require detailed factual allegations, “it demands more than an unadorned, the defendant unlawfully-harmed-me accusation.” Iqbal, 556 U.S. at 678. A complaint is insufficient if it “offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action,’” or if it “tenders ‘naked assertions’ devoid of ‘further factual enhancement.’” Id. (quoting Twombly, 550 U.S. at 555, 557). In short, the complaint must provide a “‘plain statement’ possess[ing] enough heft to ‘sho[w] that the pleader is entitled to relief.’” Twombly, 550 U.S. at 557 (quoting Fed. R. Civ. P. 8(a)(2)).

Finally, the court affords a liberal construction to a *pro se* litigant’s pleadings, holding them to a more lenient standard than those drafted by an attorney. Haines v. Kerner, 404 U.S. 519, 520 (1972) (*per curiam*); Erickson v. Pardus, 551 U.S. 89, 94 (2007) (*per curiam*). However, this liberal construction does not mean that the court has a duty to re-write the complaint. Snow v. DirecTV, Inc., 450 F.3d 1314, 1320 (11th Cir. 2006).

## 2. Federal Subject Matter Jurisdiction

Because a “federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must zealously insure that jurisdiction exists over a case, and should itself raise the question of subject matter jurisdiction at any point in the litigation where a doubt about jurisdiction arises.” Smith v. GTE Corp., 236 F.3d 1292, 1299 (11th Cir. 2001). Federal courts must always dismiss cases upon determining that they lack subject matter jurisdiction, regardless of the stage of the proceedings. Goodman ex rel. Goodman v.

Sipos, 259 F.3d 1327, 1331 n.6 (11th Cir. 2001). In order to invoke the jurisdiction of the Court, a plaintiff must properly “allege the jurisdictional facts, according to the nature of the case.” McNutt v. Gen. Motors Acceptance Corp. of Indiana, 298 U.S. 178, 182 (1936).

To have jurisdiction over a case, a district court must have at least one of the three types of subject-matter jurisdiction: (1) jurisdiction pursuant to a specific statutory grant; (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331; or (3) diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Baltin v. Alaron Trading Corp., 128 F.3d 1466, 1469 (11th Cir. 1997). The party asserting jurisdiction has the burden of establishing that their cause lies within this limited grant of jurisdiction. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

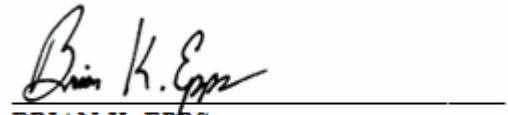
Here, Plaintiff fails to allege a basis for federal subject matter jurisdiction. Plaintiff merely alleges A.T.A.T. employees replaced a phone box with a “government box” and an unidentified person calls her and threatens her. (Doc. no. 1.) After review, it is not apparent any federal statute is applicable to invoke federal question jurisdiction. 28 U.S.C. § 1331. Further, Plaintiff has failed to allege any facts sufficient to establish federal diversity jurisdiction as she has not alleged whether Defendant is a citizen of another state or whether the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Because Plaintiff has failed to plead any facts demonstrating she is entitled to invoke the jurisdiction of the federal courts, her complaint is subject to dismissal.

## II. CONCLUSION

For the reasons set forth above, the Court **REPORTS** and **RECOMMENDS** Plaintiff’s

complaint be **DISMISSED** and this civil action be **CLOSED**.

SO REPORTED and RECOMMENDED this 13th day of November, 2018, at  
Augusta, Georgia.



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BRIAN K. EPPS  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF GEORGIA